

¶1 Appellant Bobby J. appeals the juvenile court’s January 7, 2010 order terminating his parental rights to his daughter Jesenia J., who was then sixteen months old. Bobby does not challenge the court’s findings related to the statutory grounds for termination.¹ His sole argument on appeal is that there was insufficient evidence to support the court’s finding that severance of his parental rights was in Jesenia’s best interests. According to Bobby, “[t]here are family members who are willing to be Jesenia’s guardian,” and he contends “a permanent guardianship, rather than termination of the parent-child relationship, would be in the child’s best interest.”

¶2 To terminate parental rights, a juvenile court must find the existence of at least one of the statutory grounds for termination enumerated in A.R.S. § 8-533(B) and “shall also consider the best interests of the child.” *Id.* Although statutory grounds for termination must be proven by clear and convincing evidence, only a preponderance of the evidence is required to establish that severance will serve the child’s best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find the essential elements proven

¹As statutory grounds for termination of Bobby’s parental rights, the juvenile court found (1) he had substantially neglected or willfully refused to remedy the circumstances that caused Jesenia to be in a court-ordered, out-of-home placement for nine months or longer, *see* A.R.S. § 8-533(B)(8)(a), and (2) the length of his incarceration for a felony conviction would deprive Jesenia of a normal home for a period of years, *see* § 8-533(B)(4).

by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Id.* ¶ 10.

¶3 Because the only issue Bobby raises on appeal is the court's determination of Jesenia's best interests, we limit our discussion to the evidence relevant to that finding. Shortly after Jesenia was born, Child Protective Services (CPS) took custody of her, and the Arizona Department of Economic Security (ADES) filed a petition alleging she was a dependent child whom Bobby was unable or unwilling to parent "due to [his] incarceration and substance abuse."² Initially, Jesenia was placed with her maternal uncle, Tito, and his wife, Rebecca, but they eventually asked that she be moved because Bobby and Jesenia's mother, Daniella C., were "causing problems in their family" by "calling and hanging up and coming over to their house to argue." In May 2009, Jesenia was placed in an adoptive foster home with her half-sister, Maria C., where she remained through the contested termination adjudication hearing held in the fall of 2009.

¶4 At that hearing, the family's ongoing CPS case manager testified Jesenia was "thriving" in her foster home and her foster parents were committed to adopting both girls. Tito told the juvenile court he and Rebecca wished to adopt Jesenia but also would be willing to serve as her permanent guardians if Bobby retained his parental rights. In

²About two weeks before Jesenia was born, Bobby was arrested and incarcerated on charges of possession of methamphetamine and possession of drug paraphernalia. Jesenia was adjudicated dependent in November 2009 after Bobby "submit[ted] to the issue of dependency."

the case manager's opinion, severance and adoption was in Jesenia's best interests because it "would give her permanency for the rest of her life."

¶5 At the close of the termination hearing, the juvenile court found termination of Bobby's parental rights was in Jesenia's best interests because it "would benefit this child" by "provid[ing] her with a permanent and safe home that is drug free." In addition, the court found appointment of Tito and Rebecca as permanent guardians, as an alternative to severance, likely would result in the same disruptions to Jesenia's family life that her parents had caused when she had been placed with Tito and Rebecca previously, "and that is not in the best interest of the child."

¶6 On appeal, Bobby argues there was insufficient evidence to support the juvenile court's best interests determination because "there is no detriment to Jesenia by being related" to him and because awarding Tito and Rebecca a permanent guardianship would enable Jesenia to maintain family relationships and "allow [him] to keep his status as her parent." But a court need not find a parental relationship is detrimental to terminate parental rights; a court may find severance will serve the best interests of the child if a preponderance of the evidence establishes the child will benefit from termination. *See In re Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5-6, 804 P.2d 730, 734-35 (1990) (best interests served if terminating parent's rights will confer benefit on child); *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994) (freeing child for adoption sufficient benefit resulting from severance). In assessing a child's best interests, the court may consider

whether the child's present placement is meeting the child's needs, *In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 107, 876 P.2d 1137, 1142 (1994); whether the child is adoptable, *Maricopa County No. JS-501904*, 180 Ariz. at 352, 884 P.2d at 238; and whether there is an existing plan for adoption. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998). However, "the court does not 'weigh alternative placement possibilities to determine' if severance is in the child's best interests." *Antonio M. v. Ariz. Dep't of Econ. Sec.*, 222 Ariz. 369, ¶ 2, 214 P.3d 1010, 1012 (App. 2009), quoting *Audra T.*, 194 Ariz. 376, ¶ 5, 982 P.2d at 1291.

¶7 Consistent with these authorities, the juvenile court appropriately considered such factors as the instability that had characterized Jesenia's early life and her need for permanency; the immediate availability of appropriate adoptive placement with her foster parents or, alternatively, her uncle and aunt; and the fact that each of these prospective adoptive families had established an ability to meet Jesenia's needs. It is the juvenile court's function to observe the parties, judge the credibility of witnesses, weigh the evidence, and make appropriate factual findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). We do not reweigh the evidence on review, and we will accept the court's findings as long as they are supported by reasonable evidence. *Id.* ¶ 12.

¶8 Here, the record fully supports the juvenile court's finding that a preponderance of the evidence established termination of Bobby's parental rights was in

Jesenia's best interests. Accordingly, we affirm the court's order terminating Bobby's parental rights to Jesenia.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge